THE HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 17753 OF 2006

Dated 24th September, 2007

Between:

M.Sudershan Reddy and others.

…Petitioners

And

Land Acquisition Officer, Hyderabad Urban Development Authority, 1-8-323, Paigah Palace, Police Lines, Rasoolpura, Secunderabad and others.

…Respondents.

ORDER:

In this writ petition, the petitioners, 19 in number, who are agriculturists and running dairy forms and residents of Anthaipally village, Shameerpet Mandal, Ranga Reddy District questioned the validity of acquisition of the their lands through the notification under Section 4(1) of the Land Acquisition Act, 1894 published in the Andhra Pradesh Gazette, Extraordinary, RR No.58, dated 1.8.2003 and the declaration under Section 6 of the Land Acquisition Act published in the Andhra Pradesh Gazette, Extraordinary, RR No. 66 dated 31.8.2004.

The government land to an extent of about 2000 acres in Sy.Nos 12, 41, 105, 106 etc. situated at Jawaharnagar village, Shameerpet Mandal, Ranga Reddy District was handed over to HUDA for development of Township and other allied activities. Though it is stated that such allotment is made by the government during the years 2002-03, but it has not taken any shape yet. But, however, for the alleged purpose of giving effective frontage to the entire land of Jawaharnagar Township and also to improve the accessibility and connectivity vis-à-vis Shameerpet Ghatkesar R& B Road, the Hyerabad Urban Development Authority has sent requisition initially in the year 2003 to acquire an extent of 632.07 cents situated at Anthaiplly village, Shameerpet Mandal. Accordingly, based on the said requisition of second respondent, the Hyderabad Urban Development Authority, proceedings were initiated under the Land Acquisition Act, 1894 (for short "the Act") and a notification under Section 4(1) of the Act was published on 1.8.2003 in the Andhra Pradesh Gazette, Extraordinary, R.R.No.58. The said notification was issued by the 4th respondent – District Collector as a delegated authority and the first respondent-Land Acquisition Officer was authorized to perform the functions of the Collector under Section 5-A of the Act. During the pendency of the enquiry under Section 5-A of the Act, it was represented by the

petitioners that they are small farmers and if their lands are acquired, they would be deprived of their livelihood and their entire families are dependent on agriculture and the dairies being run in their lands, and, thus, requested to delete their areas from the proposed acquisition. On such a request and after analyzing the financial requirement of HUDA's ongoing and the proposed projects, projects costs and development of Ac.2500 land, the Hyderabad Urban Development Authority agreed to delete Ac.272.18 gts of land of small farmers and it was suggested by the Hyderabad Urban Development Authority that the connectivity can be had towards road by going for 200 feet road from Jawahar Nagar to Keesara Road, and, therefore, it sought for permission to delete an extent of Ac.272.18 gts of land of small farmers from acquisition of Anthaipally village in letter bearing D.O.Lr.No.LA/46/2002, dated 5.6.2004 addressed to the Collector, Ranga Reddy District, Hyderabad, copies of which were also marked to the Government. Referring to letter dated 5.6.2004 addressed by the Vice-Chairman and the Special Officer of the Hyderabad Urban Development Authority, the Land Acquisition Officer also, by separate letter dated -07-2004 in Lr.No.LA/46/2002 addressed to the Collector, Ranga Reddy District, Hyderabad, submitted proposals under Section 48(1) of the Act for withdrawal of the acquisition proceedings. Thereafter, the fourth respondent-Collector also addressed letter dated 11.8.2004 in letter No. G2/5380/2003 to the Secretary to Government, TR& B (Roads-III) Department, seeking approval of the withdrawal proceedings under Section 48 of the Land Acquisition Act. But, however, in spite of the same, the District Collector has issued declaration vide No.G2/5380/03, dated 31.8.2004 under Section 6 of the Land Acquisition Act and the same was published in the Andhra Pradesh Gazette, Extraordinary, RR No.66, on 31.8.2004. Aggrieved thereby, the petitioners have approached this court by filing this writ petition challenging the validity of the notification issued under Section 4(1) of the Land

Acquisition Act as also the declaration issued under Section 6 of the Act.

It is the case of the petitioners that the notification under Section 4(1) of the Act was only based on the requisition by the Hyderabad Urban Development Authority to an extent of Ac. 632.07 guntas. However, in view of the representation filed by the petitioners and having regard to the extents of land held by them and the land being put to use by them, enquiry was conducted and the requisitioning authority itself has accepted the request of the petitioners and some others who are small farmers and agreed to delete an area of Ac.272.18 guntas of land and thereby submitted proposals for its deletion from the proposed acquisition through letter dated 5.6.2004. Based upon the same, even the Land Acquisition Officer has addressed letter to the Collector and the Government, but, in spite of the same, in a routine and mechanical manner, declaration was issued under Section 6 of the Act. It is their case that when the requisitioning authority itself withdrew the lands of the petitioners from the proposed acquisition having regard to the request of the petitioners and its financial position and submitted proposals by suggesting an alternative way for the purpose for which the lands of the petitioners are sought to be acquired, and even the Collector, who has notified the land as delegated authority of the Government addressed to the Government on 11.8.2004 seeking approval for the withdrawal proceedings, without examining the requirement of the land of the petitioners by the requisitioning authority and existence of public purpose, declaration under Section 6 of the Act was published including the lands of the petitioners.

Counter affidavits have been filed by the Secretary, Hyderabad Urban Development Authority and also the Land Acquisition Officer.

In the counter-affidavit filed by the Land Acquisition Officer, it is stated that the Government has delegated the powers to all the

Collectors under Sections 4, 5-A, 6 and 17 (4) of Land Acquisition Act, 1894 for acquisition of land on behalf of Municipalities, Urban Development Authorities and A.P.H.B. vide Government Memo No.1656/E1/86-1 MA & UD, dated 24.7.1996. It is stated that there are laches on the part of the petitioners in approaching this court, as the notification under Section 4(1) of the Act was issued on 1.8.2003. While referring to the letter addressed by the Vice-Chairman of Hyderabad Urban Development Authority, dated 5.6.2004, in which it was felt to drop the acquisition of private lands in Ankaipally village, it is stated that the 3rd respondent-Government had taken a decision not to withdraw the land acquisition proceedings vide letter No. 16056/11/2004, dated 1.11.2006 MA & UD Department and in view of the same further proceedings are being taken under the provisions of the Land Acquisition Act.

A separate counter affidavit is filed by the Secretary of the Hyderabad Development Authority stating that an extent of 2000 acres of land situated at Jawaharnagar village was allotted to the said authority for development of Township and other allied activities. It is stated that there was a proposal to acquire an extent of about 600 acres of land including the land of the petitioners in Anthaipally village to give effective frontage to the entire land of Jawaharnagar Township and to improve the accessibility and connectivity vis-à-vis Shameerpet-Ghatkesar R&B Road. While referring to notification under Section 4(1) of the Act notifying an extent of Ac.632.07 cents situated at Anthaipally village, Shameerpet Mandal, it is admitted that in view of the representation of the petitioners and other affected persons of Anthaipally village, letter dated 5.6.2004 was issued vide D.O.Lr.No.IA/46/2003 dated 5.6.2004 agreeing to delete an extent of Ac.272.18 guntas of land belonging to small farmers after reviewing the financial position of HUDA for completion of on-going and proposed projects. It is further stated that the Land Acquisition Officer, HUDA had sent proposals vide his letter dated 28.7.2004 to the Collector, Ranga

Reddy District for withdrawal of the above said extent of land and the Collector in turn addressed to Government vide letter dated 11.8.2004 seeking approval for withdrawal. Further, it is stated that the second respondent-HUDA addressed letter dated 13.10.2006 to the Government stating that there has been number of developments that have taken place since the submission of the withdrawal proposals to the Government. It is stated that HUDA had taken many prestigious projects such as Outer Ring Road, Elevated Express Way and Integrated Township and the city is expanding in all directions and HUDA is planning major project in the area as an extension of Cyberabad Development Area. It is stated that in view of the said proposals dated 13.10.2006, Government vide their proceedings dated 1.11.2006 in letter No.16056/ii/2004, dated 1.11.2006 has not approved the proposal for withdrawal.

Reply affidavit is also filed by the petitioners disputing the averments in the counter affidavit that some of the lands of the petitioners are in the midst of 2000 acres of land which was allotted by the Government to the HUDA. It is stated that very requisition is for improvement of frontage and road connectivity and as such the allegation that some of the lands of the petitioners are in the midst of the township is false and incorrect.

Heard Shri E.Manohar, learned Senior Advocate and Shri Raghunandan Rao, learned Advocate appearing for the petitioners, learned Government Pleader and Shri Rajagopal Rao appearing for the Hyderabad Urban Development Authority.

It is submitted by Shri E.Manohar, learned Senior Counsel appearing for the petitioners that in the instant case, acquisition proceedings are initiated only on the request of the second respondent – Hyderabad Urban Development Authority and a total extent of Ac.632.07 guntas of land was notified under Section 4(1) of the Land Acquisition Act. But, however, the petitioners, who are small farmers doing agriculture and running dairies in their lands have represented to the HUDA authorities stating that their only

source of livelihood is their lands and their families are dependent upon them, upon which, enquiry was conducted and decision was taken for withdrawal of an extent of Ac.272.18 guntas of land. It is stated that all the petitioners put together own an extent of Ac.185.10 guntas of land and in view of their representation and the financial position of HUDA for completion of ongoing projects and proposed projects, the HUDA had agreed to delete an extent of Ac.272.18 guntas of land of small farmers from the proposed acquisition and suggested to go for 200 feet road from Jawahar Nagar to Keesara Road to have connectivity. It is stated that the requisitioning authority has addressed to the Collector who issued notification as a delegated authority. Therefore, the learned Senior Counsel submits that when the very requisitioning authority has dropped the proposal for acquisition of the land to an extent of Ac.272.18 guntas of land and addressed to that effect to the District Collector, who in turn addressed to the Government for approval of the withdrawal proceedings by letter dated 11.8.2004, the District Collector ought not to have issued the Declaration in a routine and mechanical manner in the absence of any requirement of the land of the petitioners for any public purpose. It is submitted that the declaration is now defended on the ground that the Government has rejected the proposals for withdrawal of the lands from acquisition, which is later in point of time to the date of declaration. It is stated that the Government has not considered the necessity of the land for any public purpose and rejected the proposals only on the ground that matters are pending before this Court. Therefore, it is submitted that as on the date of issuing the declaration under Section 6 of the Act, no public purpose did exist requiring the lands of the petitioners to be acquired and as such, the notification and declaration are fit to be quashed. In support of his contention, learned counsel for the petitioners placed reliance on the judgment of the Honourable Supreme Court in **Hindustan Petroleum Corpn. Ltd. V. Darius Shapur Chenai**[1].

On the other hand, it is submitted by the learned Government Pleader and the learned counsel appearing for the Hyderabad Urban Development Authority that though the notification was issued as early as in the year 2003, but the petitioners have approached this court belatedly and as such, the writ petition is liable to be dismissed on account of delay and laches. Reliance is placed by the learned counsel on the judgment of the Honourable Supreme Court in **The Municipal Council, Ahmednagar & Anr. V. Shah Hyder Beig & Ors.**[2]**.** It is further submitted that though decision was taken by the Hyderabad Urban Development Authority for withdrawal of an extent of Ac.272.18 guntas of land and proposals were also forwarded for such withdrawal to the Collector and the Government, but, however, subsequently, a letter dated 13.10.2006 was submitted enumerating various developmental activities undertaken by the HUDA with regard to Outer Ring Road, Elevated Express Way and Integrated township and the plan of HUDA to develop the area as an extension of Cyberabad Development Area and as such, the Government issued proceedings dated 1.11.2006 rejecting the proposal for withdrawal of the acquisition, and, therefore, declaration under Section 6 of the Act was issued including the lands of the petitioners.

From the above pleadings, at the outset, it is to be noted that in the instant case, the Hyderabad Urban Development Authority has sent requisition to acquire an extent of about 632 acres of land. Though in the notification the said land was proposed to be acquired for development of township, but from the counter affidavits filed and various communications, it is clear that the said lands were intended to improve the accessibility and connectivity vis-à-vis Shameerpet Ghatkesar R&B Road to the land of Jawaharnagar township. As much as the acquisition was not of urgent nature, the petitioners and some others, who are affected by the proposed acquisition made a detailed representation stating that they are all

small farmers and their only source of livelihood is, their lands proposed to be acquired and if they are acquired, they would be deprived of their livelihood. In view of the said request and also in view of the financial position of HUDA for completion of the ongoing projects and the proposed projects, the HUDA agreed to delete an extent of Ac.272.18 guntas of land of small farmers and accordingly addressed the Collector, Ranga Reddy and the Government for dropping the acquisition of private land in Anthaipally village by proposing to take connectivity towards road by going for 200 feet road from Jawahar Nagar to Keesar Road. In the said letter it is specifically stated that considering the request of the petitioners and other applicants it was agreed to delete an extent of Ac.272.18 of land of small farmers in view of the financial position of the Hyderabad Urban Development Authority for completion of ongoing and the proposed projects and availability of the alternative proposal to have access from Jawahar Nagar to Keesara Road. Even the Land Acquisition Officer also addressed to the Collector vide his letter dated --7—2004 for withdrawal of the land of the petitioners from acquisition. Though the Collector himself, as a delegated authority, has issued notification, but, however, instead of taking decision as to the requirement of the land and existence of public purpose for taking steps for issuance of declaration under Section 6 of the Act, he has addressed to the Government seeking approval for the withdrawal of lands from acquisition. Even the government did not consider the existence of public purpose and the need of the land of the petitioners to proceed with the declaration and simply declined to order for withdrawal of acquisition on the ground that certain persons whose lands are proposed to be acquired have approached the Court.

Though notification under Section 4(1) of the Land Acquisition Act was issued on 1.8.2003, but, however, the same is a preliminary notification to be issued on appearing to the Collector of a land likely to be needed for any public purpose, which will enable any

officer or his servants to enter upon and survey and take levels of any land, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adaptable for such purpose and to set out the boundaries of the land proposed to be taken and the intended line of the work proposed to be made thereon. But, however, the declaration under Section 6 of the Land Acquisition Act is a substantive one with respect to a particular land and the same has to be issued only after the appropriate Government or the District Collector is satisfied that such land is needed for a public purpose. Section 6 of the Land Acquisition Act to the extent relevant to the case on hand is extracted below:

> "6. Declaration that land is required for a public purpose:- (1) Subject to the provisions of Part VII of this Act, when appropriate Government is satisfied, after considering the report, if any, made under Section 5-A, sub-section (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary of such Government or of some officer duly authorized to certify its orders, and different declarations may be made, from time to time in respect of different parcels of land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2)."

From the above, it is amply clear that after issuance of the notification under Section 4(1) of the Land Acquisition Act and before issuing the declaration under Section 6, the District Collector must be satisfied with reference to the material on record as to whether the whole or any part of the land notified under Section 4(1) of the Act is needed for any public purpose or not. In the case on hand, after issuance of the notification under Section 4(1) of the Act, the petitioners and others, who claim to be small farmers and dependent solely on their lands sought to be acquired, requested the requisitioning authority for withdrawal of their lands from the proposed acquisition and the Hyderabad Urban Development Authority after considering such a request and also in view of its

financial position for completing the ongoing and the future projects and also on finding an alternative way for the purpose for which the lands of the petitioners are sought to be acquired, agreed for deletion of an extent of Ac. 272.18 guntas of land of the small farmers from the proposed acquisition and addressed the District Collector accordingly through its letter bearing D.O.Lr.No.LA/46/2002, dated 5.6.2004. Further, the Land Acquisition Officer also addressed letter bearing Lr.No.LA/46/2002 dated --7—2004 to the District Collector, who has issued notification under Section 4(1) of the Act, for approval of the withdrawal proceedings in view of the letter of the requisitioning Department taking a decision to delete an extent of Ac.272.18 guntas of land from the land proposed to be acquired and in respect of which notification was issued under Section 4(1) of the Act. Basing on the letters addressed by the Vice-Chairman, Hyderabad Urban Development Authority and the Land Acquisition Officer, the District Collector, instead of taking a decision for deleting the said land from the purview of declaration under Section 6 of the Act, has addressed a letter to the Government seeking approval for the said proposals. Even the subsequent communication of the Government dated 1.11.2006 was issued without examining the issue in proper perspective.

The declaration under Section 6 of the Act is sought to be defended on the ground that the Hyderabad Urban Development Authority addressed a letter bearing Lr.No.B2/5563/02, dated 13.10.2006 to the Secretary, MA & UD Department stating that there has been a number of developments that have taken place since the withdrawal proposals were submitted to the Government and they require revisit to the said proposals and after considering the said letter, the Government rejected the withdrawal proposals vide its letter bearing Lr.No.16056/ii/2004 dated 1.11.2006. Therefore, the declaration under Section 6 of the Act is valid and legal and requires no interference by this court. But, both the said letters

require no consideration for the purpose of adjudication of this matter, in which Section 6 declaration is sought to be declared as null and void, as the same are post-declaration decisions. Though it is not in dispute that the land notified for one public purpose can be utilized after acquisition and vesting with the government for another public purpose, but, what is required by Section 6 of the Land Acquisition Act is the satisfaction of the District Collector as to the requirement of a particular land before the declaration under Section 6 is issued. But, in the instant case, there is no material as to the satisfaction of the District Collector before issuance of the declaration under Section 6 of the Act for the requirement of the land in question. On the contrary, the requisitioning department took a decision to delete an extent of Ac.272.18 guntas of land from the proposed acquisition of land notified under Section 4(1) of the Act and addressed a letter to that effect to the Collector. The Land Acquisition Officer also addressed the District Collector with regard to the approval of the withdrawal proceedings by the requisitioning department. What is more, even the Collector himself forwarded the withdrawal proposals to the Government for their approval. Therefore, what is deducible from the above is that there was no satisfaction arrived at by the District Collector for issuing the declaration as required by Section 6 of the Act and on the other hand, the Collector was in-knowledge that the land to an extent of Ac.272.18 guntas was not required by the requisitioning department and there was no public purpose existing, as alternative road was suggested, and he was of the opinion that the same would be deleted from the proposed acquisition. When the requisitioning Department itself is no longer interested, proceeding with the proceedings for acquisition is without any basis.

In **Hindustan Petroleum Corpn. Ltd. V. Darius Shapur Chenai (1 supra),** relied on by the learned counsel for the petitioners, the Honourable Supreme Court, while considering the constitutional right guaranteed under Article 300-A of the

Constitution of India vis-à-vis the State's power of 'eminent domain', has held that the State in exercise of its power of may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

In the instant case, as discussed above, the need and public purpose did not exist at all as obligated under Section 6 of the Act for issuance of declaration. In view of the same, the declaration published on 31.8.2004 is invalid.

The other objection taken by the learned counsel for the respondents is that there is delay on the part of the petitioners in approaching the court.

In that connection, it is to be noted that after issuance of notification under Section 4(1) of the Act and before publication of the declaration under Section 6 of the Act, the requisitioning authority had taken a decision to withdraw the land of the petitioners and others totally admeasuring Ac. 272.18 guntas from the proposed acquisition, but, ultimately it was rejected by Government on 1.11.2006. In that view of the matter, it is not a case where the delay can be attributed to the petitioners to reject their request only on that ground. The judgment of the Honourable Supreme Court in **The Municipal Council, Ahmednagar & Anr. V. Shah Hyder Beig & Ors. (2 supra),** wherein the Supreme Court considered the award passed and possession taken in 1976 was challenged in 1992, is not applicable to the facts and circumstances of this case, which are different and distinct. The judgment of a Division Bench of this court i n **Bijanbee and others v. District Collector, Ranga Reddy District and others**[3] wherein the Division Bench rejected the contention of the petitioners that the acquisition is for future projects and the same is a colourable exercise of power was rejected, is also not applicable to the case on hand.

For the reasons stated above, the notifications issued under Section 4(1) of the Land Acquisition Act on 1.8.2003 and the

declaration published under Section 6 of the Act on 31.8.2004 to the extent of the lands of the petitioners are liable to be set aside and are accordingly set aside.

In the result, the writ petition is allowed as prayed for. No costs.

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24--9--2007 **R.SUBHASH REDDY, J.**
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[1] (2005) 7 SCC 627
[2] JT 1999(10) SC 336
[3] 2006 (1) ALT 479 (D.B.)